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By E-Filing and Regular Mail

The Honorable Madeline Cox Arleo, U.S.M.J.
United States District Court
M.L. King, Jr. Federal Building
& Courthouse
50 Walnut Street, Room 2060
Newark, New Jersey 07101

Picatinny Federal Credit Union v. Federal National Mortgage Association
Civil Action No. 09-1295 (GEB)

Dear Judge Arleo:

A single, but significant, discovery dispute has arisen between Picatinny and Fannie Mae which we respectfully ask Your Honor to resolve. That dispute involves whether Picatinny may now depose Harriet Wolff, an additional fact witness first identified as a person with relevant knowledge by Fannie Mae in a Third Amendment to its Rule 26 Disclosures after the close of discovery. The background facts are as follows.

A. Non-disclosure of Harriett Wolff as a person upon whose testimony Fannie Mae would rely.

On May 5, 2009, Fannie Mae provided initial Rule 26 disclosures of individuals likely to have discoverable information that Fannie Mae may use in support of its case (copy annexed as Exhibit A). Harriet Wolff was not mentioned. Six months later, on or about November 11, 2009, Fannie may served its First Amended Initial Disclosures under Rule 26, again listing people with knowledge that Fannie Mae might use (annexed as Exhibit B). Once again, Harriet

Wolff was not mentioned. Four months after that, on March 10, 2010, Fannie May served its Second Amended Initial Disclosures under Rule 26 (annexed as Exhibit C). Again, Harriet Wolff is not mentioned as a person who had discoverable knowledge and someone upon whom Fannie Mae might rely.

As a result of the foregoing submissions by Fannie Mae regarding present and former employees who had knowledge of relevant facts whose testimony it might use to support its position in the case, Picatinny was led to believe that Harriet Wolff was not someone with significant relevant information, and certainly not anyone upon whom Fannie Mae might rely in any way. The purpose, of course, of Rule 26 disclosures is to put the burden of voluntary disclosure on Fannie Mae -- the only party who possesses the information -- to identify which among its thousands of employees whose names appear on various documents truly has any relevant knowledge, and, more importantly, which of those people will give testimony that Fannie Mae might use in some fashion.

By the end of July 28, 2010, pursuant to Your Honor's order, fact discovery had closed with respect to all witnesses, with one exception: John Davis (a GMAC employee whose deposition was deferred until the GMAC's delayed and disputed e-mail production was completed). (See Fifth Amended Pretrial Discovery Order, Docket Entry No. 73, annexed as Exhibit D). Thus, for all intents and purposes, fact discovery essentially concluded before August 2010.

As Your Honor knows, Fannie Mae has produced hundreds of thousands of pages of documents which make reference to hundreds of Fannie Mae employees who, in one way or another, had some contact with U.S. Mortgage or the loans at issue in this case. Well before the discovery cut-off, we did see the name of Harriet Wolff on various documents. To find out if she knew anything early on, my partner, James Forte, reached out to her by phone. Not only did she indicate that she didn't remember very much, but when Mr. Forte advised her that Fannie Mae has counsel and there was ongoing litigation, she declined to speak with him without first going through Fannie Mae and its counsel. Hence, we had no substantive information about her or the extent of her knowledge. Given the fact that Fannie Mae had never identified her as a person with relevant knowledge, and her alleged inability to remember anything because she left Fannie Mae in 2007, we had concluded that she did not have (or could not recall) any information that was relevant to this case -- a conclusion derived from the conduct of Fannie Mae and Ms. Wolff's own words.

On August 18, 2010 – three weeks after the conclusion of discovery -- Fannie Mae served a Third Amended Rule 26 Disclosure (copy annexed as Exhibit E). This long list of people identified with relevant knowledge whose testimony Fannie Mae might use was the same as before with two exceptions. At the head of the list was a new name: Mr. Nick Figlo. He was identified as a new witness upon whom Fannie Mae might rely to testify about the investigation of U.S. Mortgage after the Cross Valley Credit Union complaints had been received by Fannie Mae (the subject on which a prior Fannie Mae's witness, Joan Kane, had recently testified that she knew nothing). Because Mr. Figlo was a new witness, we asked for the opportunity to depose him, and Fannie Mae agreed.

Unbeknownst to us, toward the very end of the list of people who had been previously identified as having discoverable information, Fannie Mae slipped in the name, Harriet Wolff.

Quite candidly, we simply overlooked the fact that any other new name had been added amidst all the other witnesses who had already been named.

On January 14, we received a rebuttal expert report from Fannie Mae by Michael G. Mayer, CFA, CFE, a purported expert on the adequacy and reasonableness of Fannie Mae's conduct after a March 2005 "red" audit revealed that US Mortgage's prior misuse of Fannie Mae funds posed a significant risk of fraud (report annexed as Exhibit F). Astonishingly, Michael Mayer opined on the efficacy of Fannie Mae's conduct based upon his conversations with Harriet Wolff on December 22, 2010, just weeks before the report was finalized and more than six months after the close of fact discovery. Mr. Mayer relies upon this information imparted privately to him by Harriet Wolff to reach his conclusions. For example:

1. Mr. Mayer's report (pp.8-9) bases his opinion about the reasonableness of Fannie Mae's conduct upon what Harriet Wolff reviewed and what she did to correct U.S. Mortgage's improper commingling of funds. This, in turn, is based upon conversations which Mr. Mayer had with Harriet Wolff on December 22, 2010. (See Mayer Report at p. 9 and fn. 37).

2. Mr. Mayer explains why Fannie Mae decided to give the infamous "red" audit of U.S. Mortgage such a serious rating. Here, too, his statements are based solely upon conversations with Harriet Wolff on December 22, 2010. (See Mayer Report at p.12 and fn. 61).

3. Mr. Mayer further suggests that the issues raised by the 2005 "red" audit of U.S. Mortgage were not the sort of problems that would typically result in the termination of Fannie Mae's relationship with a mortgage banker. Once again, the only support cited for this statement is Mr. Mayer's conversation with Ms. Wolff on December 22, 2010. (See Mayer Report at p.12 and fn. 63).

Several days after our review of the Michael Mayer report, I requested that counsel for Fannie May consent to our taking the deposition of Harriet Wolff. We sought particularly to inquire about her conversations with Michael Mayer which had just been disclosed to us in the

Mayer report, the facts which she supposedly imparted to him to support his expert opinion, and her knowledge of those supposed facts. Counsel for Fannie Mae has refused to permit the Harriet Wolff deposition to proceed.

We respectfully request that the Court authorize us to take a deposition of Harriet Wolff before we proceed with expert depositions, particularly before we proceed with the expert deposition of Michael Mayer. It is critical to find out what Ms. Wolff knows, what she told Mr. Mayer, and whether there is any substance behind the information she gave him just weeks ago. This is particularly so because we were affirmatively led to believe by her and by Fannie Mae throughout the fact discovery period that she knew and could remember nothing and that Fannie Mae would not use her testimony to support its case.

This deposition will not prejudice Fannie Mae in any way inasmuch as it now appears that Harriet Wolff will necessarily be a deposition witness in the other consolidated cases. Hence, her deposition must be taken anyway. Fannie Mae's refusal to allow us to proceed with the deposition is designed, however, to prejudice Picatinny by precluding it from getting important information needed to undermine or attack the expert opinion just offered by Mr. Mayer. Given the fact that Fannie Mae withheld Harriet Wolff's name as someone having relevant knowledge upon whom Fannie Mae would rely until after the fact discovery period closed and then used her purported knowledge to arm their expert, we believe our request to take her deposition at this juncture is fully justified.

Respectfully,

/s/ *Jeffrey W. Lorell*

Jeffrey W. Lorell

Enc.

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JWL/mg